

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL  
CIRCUIT OF FLORIDA IN AND  
FOR MIAMI-DADE COUNTY,  
FLORIDA

GENERAL JURISDICTION  
DIVISION

CASE NO: \_\_\_\_\_

BRICKELL HOMEOWNERS ASSOCIATION, INC.,  
a Florida non-profit corporation

and

CHRISTOPHER B. MULLIN, a citizen of the City  
of Miami, Florida

Plaintiffs,

v.

CITY OF MIAMI, a Florida Municipal Corporation

Defendant.

**EMERGENCY COMPLAINT FOR DECLARATORY RELIEF**

Jurisdiction and Request for Expedited Relief

1. This is a civil action seeking expedited declaratory relief pursuant to Florida Statutes Sections 86.011 and 86.111.
2. All conditions precedent to the bringing of this action have either been performed by Plaintiffs or have otherwise occurred.
3. Pursuant to Florida Statute Section 86.111, and based upon the facts set forth below, Plaintiffs request an accelerated hearing on this matter, with this action being given priority over

other pending actions.

#### Parties

4. Plaintiff BRICKELL HOMEOWNERS ASSOCIATION, INC. is a Florida non-profit corporation that represents the interests of over 35,000 citizens that reside in the Brickell area of Miami, and is duly registered as a neighborhood association with the City of Miami. Plaintiff CHRISTOPHER B. MULLIN is a citizen of, and resides in, and is a registered voter in the City of Miami, Florida.

5. Defendant CITY OF MIAMI (the “City”) is a Florida municipal corporation in Miami-Dade County, Florida where venue resides. The City is a governmental entity and “a public institution designed to promote the common interests of the inhabitants in their organized capacity as a local government,” and “[i]ts objects are governmental, not commercial,” it was “[c]reated for public purposes only.” *Miami Water Works Local No. 654 v. City of Miami*, 26 So. 2d 194, 197 (Fla. 1946).

#### Nature of Action

6. This is an action challenging whether the City can lease certain environmentally sensitive public park land to a for-profit corporation without complying with the competitive bidding process contained in Section 29-B of the City’s Charter. Copies of City of Miami Resolution R-18-0523 and the License Agreement executed on February 27, 2019 (the “Agreement”) are attached hereto as Exhibits A and Exhibit B, respectively.

### Factual Allegations

7. The City operates under its own Charter (the "Charter"). The Charter enables the City to "conduct municipal government, perform municipal functions and render municipal services and may exercise any power for municipal purposes, except when expressly prohibited by law." Sec. 3, Charter.

8. Section 29-B of the Charter governs the lease or sale of municipal property. That section provides that:

Notwithstanding any provision to the contrary contained in this Charter or the City Code, and except as provided below, the city commission is prohibited from favorably considering any sale or lease of property owned by the city unless there is a return to the city of fair market value under such proposed sale or lease. The city commission is also prohibited from favorably considering any sale or lease of city-owned property unless

(a) there shall have been, prior to the date of the city commission's consideration of such sale or lease, an advertisement soliciting proposals for said sale or lease published in a daily newspaper of general paid circulation in the city, allowing not less than ninety (90) days for the city's receipt of proposals from prospective purchasers or lessees, said advertisement to be no less than one-fourth ( $\frac{1}{4}$ ) page and the headline in the advertisement to be in a type no smaller than 18-point and,

(b) except as provided below, there shall have been at least three (3) written proposals received from prospective purchasers or lessees; however, if there are less than three (3) such proposals received and if the guaranteed return under the proposal whose acceptance is being considered is equal to fair market value the city commission determines that the contemplated sale or lease will be in the city's best interest then, subject to the approval of a majority of the votes cast by the electorate at a referendum, the sale or lease may be consummated.

9. Subpart A of the Charter of the City of Miami is the Citizens' Bill of Rights, which provides, in pertinent part:

Remedies for violations. Residents of the City shall have standing to bring legal actions to enforce the City Charter, the Citizens' Bill of Rights, and

the Miami-Dade County Citizens' Bill of Rights as applied to the City. Such actions shall be filed in Miami-Dade County Circuit Court pursuant to its general equity jurisdiction and, if successful, the plaintiff shall be entitled to recover costs, but not attorney's fees, as fixed by the court. Any public official, or employee who is found by the court to have willfully violated this section shall forthwith forfeit his or her office or employment.

Subpart A, paragraph C of the CHARTER (Emphasis supplied).

The City's Scheme to Avoid the Important Public Protection of Competitive Bidding

10. The City presently owns, and at all times material hereto has owned, certain real property located on Virginia Key, an environmentally sensitive barrier island which is managed by the Virginia Key Beach Park Trust pursuant to Section 38-230 of the City of Miami Code of Ordinances.
11. On November 15, 2018, the City approved Resolution R-18-0523, the purported effect of which is to approve the City entering into an agreement with ULTRA to allow ULTRA to conduct an electronic music festival on Virginia Key.
12. Resolution R-18-0523 approves a scheme to avoid the important public protections of competitive bidding by calling the agreement with ULTRA a license, rather than a lease, when in fact the terms of the arrangement clearly constitute a lease under Florida law, which lease is subject to the competitive bidding protections of Section 29-B of the City's Charter.
13. On February 27, 2019 the City entered into a 33 page License Agreement with EVENT ENTERTAINMENT GROUP, INC. ("ULTRA").
14. ULTRA is planning on conducting its festival on Virginia Key on March 29, 30 and 31, 2019.

15. The court in *Outdoor Media of Pensacola, Inc. v. Santa Rosa County*, 554 So. 2d 613, 615 (Fla. 3d DCA 1989) outlined Florida law concerning the distinction between licenses and leases as follows:

The question in this case is whether the agreement between Community Sign Service and Santa Rosa County was a lease or a license. In DeVore v. Lee, 158 Fla. 608, 30 So.2d 924, 925 (1947), the court defined a lease as "a conveyance by the owner of an estate to another of a portion of his interest therein for a term less than his own [which] passes a present interest in the land for the period specified." A lease is defined in Black's Law Dictionary 829 (5th ed. 1979), as a -

. . . Contract for exclusive possession of lands or tenements for determinate period. Contract for possession and profits of lands and tenements either for life, or for certain period of time or during the pleasure of the parties. . . . Conveyance of interest in real property for specified period or at will. Conveyance or grant of estate in real property for limited term with conditions attached.

Black's also defines a "license" variously as

[a] permit, granted by an appropriate governmental body, generally for a consideration, to a person, firm, or corporation to pursue some occupation or to carry on some business subject to regulation under the police power. A license is not a contract between the state and the licensee, but is a mere personal permit. License with respect to real property is a privilege to go on premises for a certain purpose, but does not operate to confer on, or vest in, licensee any title, interest, or estate in such property.

Black's Law Dictionary 829 (5th ed. 1979). See also 51 Am.Jur.2d, Licenses and Permits § 1 (1970)--"A license is in the nature of a special privilege, entitling the licensee to do something that he would not be entitled to do without the license."

16. The rights under the Agreement granted to ULTRA comport with the generally accepted definition of a lease under Florida law. ULTRA has been "given far more than a revocable permission or privilege to enter upon the property." See *Ryan v. Nat'l Marine Mfrs. Ass'n*, 103 So. 3d 1001, 1004 (Fla. 3d DCA 2012).

17. Florida Courts have indicated that in interpreting an agreement, "the interpretation of the contracts should be consistent with reason, probability, and practical aspects of the transaction,"

and “the contract should be considered as a whole, not in its isolated parts.” *Blackshear Mfg. Co. v. Fralick*, 102 So. 753, 754 (Fla. 1925).

18. Florida law is settled that “A license . . . is generally revocable at the pleasure of the grantor . . . .” *Dupont v. Whiteside*, 721 So. 2d 1259, 1263 (Fla. 5th DCA 1998) citing *Dance v. Tatum*, 629 So. 2d 127 (Fla. 1993) (“[a] license may generally be revoked at the pleasure of the grantor...” ) citing *Seaboard Air Line Ry. v. Dorsey*, 149 So. 759, 760 (Fla. 1932). *See also Devlin v. Phoenix, Inc.*, 471 So. 2d 93, 95 (Fla. 5th DCA 1985) (“The distinctive characteristic of a license is that it . . . is, in its very nature, necessarily revocable at will.”)

19. The Agreement is not revocable at the pleasure of the City of Miami. Rather, the right to terminate the Agreement is extremely limited and can only be done under two carefully defined circumstances: (i) for cause pursuant to Section 3.4.1 after giving 20 days notice of breach and an opportunity to cure; or (ii) without cause “upon at least three hundred and five (305) days prior notice to the next subsequent Event.”

20. That the Agreement is not revocable by the City at will is proven *res ipsa loquitor* and beyond doubt by the fact that the City is powerless to revoke the Agreement without cause and stop ULTRA from conducting its festival on Virginia Key on March 29, 30 and 31, 2019 under any circumstances as of the date this lawsuit was filed. As such it is impossible for the City to argue the Agreement is at its pleasure.

21. Further, the City’s limited rights to terminate the Agreement is further limited by the language in Section 3.5 of the Agreement:

**3.5 Reasonable Efforts.**

For purposes of this Agreement, the parties shall use commercially reasonable efforts to assist and facilitate future productions to take place on the Property.

As such, even the right to terminate “upon at least three hundred and five (305) days prior notice to the next subsequent Event” is subject to a requirement that the City has used “commercially reasonable efforts” to ensure that the Agreement remains in force. This further proves the Agreement is not revocable at will.

22. While the Agreement makes vague and generic statements that it is non-exclusive, the express and specific language of the Agreement makes clear that it provides ULTRA with exclusive use of the leased premises. In *Homestead-Miami Speedway, LLC v. City of Miami* (828 So.2d 411, 413 (3d DCA 2002)) the court cited “exclusive use of Bayfront Park for at least three days each year” as a factor in finding that a license agreement was in fact a lease agreement. The specific language of the Agreement goes far beyond that found in the License Agreement at issue in *Homestead-Miami Speedway, LLC v. City of Miami* by providing exclusivity to ULTRA not only *vis a vis* the City of Miami, but also *vis a vis* third parties and competing music festivals.

23. The City of Miami is expressly restricted from accessing the demised property during the 35 day “Use Period” in which ULTRA has exclusive use of the Property, except for five carefully limited circumstances that involve ULTRA failing to perform its obligations and the City accessing the property to cure an obligation ULTRA has failed to perform after notice and a ten day period to cure.

24. The Agreement also contains numerous provisions that also grant ULTRA exclusivity *vis a vis* third parties, including the following excerpts in the following Sections:

4.10

... the City agrees not to enter into another License or Use Agreement on this Property that would interfere with Licensee’s ability to operate for the Permitted Uses on the

Property according to the terms of this Agreement. The City agrees not to use or permit others to use the Property under the control of the City during the Use Period except as usually agreed by the City and Licensee. Licensee recognizes and agrees that the Property is a public site and during the entirety of the Use Period, the Licensee will cooperate with the City to maximize public access to the Property. This will not be construed to prevent the Licensee from restricting access to the Event.

#### 4.11

The Event shall be the only multi-day multi-stage music festival to be produced at, and utilizing, the entire Property. The City shall not authorize or make the Property available to another producer of a multi-day, multi-stage music festival or similar music-based event, with over 30,000 patrons expected per day, during the Use Period for each year in which the Event takes place, and including sixty (60) days before Licensee's first Event day and sixty (60) days after the Use Period, for the term of this Agreement. The City acknowledges and agrees that the restrictions described in this Section are reasonably necessary to protect the legitimate business interest of Licensee.

#### 4.14

After the Event, the Licensee shall use commercially reasonable efforts to prioritize the removal of fencing and barricades on the Property, subject to safety and other requirements, in order to ensure maximum public use of the Property.

The exclusivity granted to ULTRA under the Agreement against third parties goes far beyond that which was granted in the License Agreement at issue in *Homestead-Miami Speedway, LLC v. City of Miami*.

25. Another factor examined in *Homestead-Miami Speedway, LLC v. City of Miami* was the assignability of rights under the agreement. Again, while the Agreement contains vague and generic assertions that the rights of ULTRA under the Agreement are not assignable, it contains specific and express language in Section 3.1 stating that ULTRA can:

grant to third parties the right to sell, use or display any goods or products on, to, or from the Property.



This right to grant third parties the use of, and access to, the demised property could not be broader or less restricted, and it is hard to imagine an activity that would not be permitted to be assigned to a third party by ULTRA. This language also goes far beyond the grant of rights contained in the License Agreement at issue in *Homestead-Miami Speedway, LLC v. City of Miami*.

26. Further, as in the License Agreement at issue in *Homestead-Miami Speedway, LLC v. City of Miami*, there is no prohibition whatsoever on ULTRA assigning the Agreement without the City's approval under a myriad of methods, including but not limited to selling a controlling corporate interest in ULTRA to another party, or merging with another entity.

27. The Agreement contains almost identical terms as set forth in the License Agreement deemed by the Third DCA to be a lease in *Homestead-Miami Speedway, LLC v. City of Miami*. And it contains similar disclaimers that it is not a "lease" and is a similar effort by the City to enter into a lease agreement while avoiding the public protections of competitive bidding in Section 29-B of its Charter. The City tried to disguise the Agreement as a license rather than what it really is- a lease . . . just like it did in *Homestead-Miami Speedway, LLC v. City of Miami*.

## **COUNT I**

### **Violation of Section 29-B of the City Charter**

28. Plaintiffs repeat and reallege the foregoing paragraphs 1 to 27 as if fully set forth herein.

29. This is a count for declaratory judgment pursuant to Florida Statute § 86.011.

30. There is an actual, bona fide, practical, and present need for a declaratory relief and a continuing controversy between the parties regarding Section 29-B of the City Charter.

31. Plaintiffs are in doubt as to their rights, privileges, immunities, and obligations under Section 29-B of the City Charter.

32. Section 29-B of the City Charter provides that whenever the City desires to lease or sell City property, it is required to institute competitive bidding.

33. The Agreement violated Section 29-B because it constitutes a lease and the City did not undertake the required competitive bidding process.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs pray that the Court enter judgment against Defendant City of Miami, awarding Plaintiffs all appropriate relief, including the following:

- (i) A declaration that the City must strictly comply with the requirements of Section 29-B of the City Charter;
- (ii) Costs, including attorneys' fees, to the extent permitted by law;
- (iii) Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/djw/

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**EXHIBIT A**  
**RESOLUTION**

**PH.4****5067****Department of Real  
Estate and Asset  
Management****RESOLUTION**

A RESOLUTION OF THE MIAMI COMMISSION, WITH ATTACHMENT(S), BY A FOUR-FIFTHS (4/5THS) AFFIRMATIVE VOTE AFTER AN ADVERTISED PUBLIC HEARING, RATIFYING, CONFIRMING, AND APPROVING THE CITY MANAGER'S RECOMMENDATION AND WRITTEN FINDING, ATTACHED AND INCORPORATED AS EXHIBIT "A," PURSUANT TO SECTION 18-85(A) OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED; WAIVING THE REQUIREMENTS FOR COMPETITIVE SEALED BIDDING METHODS AS NOT BEING PRACTICABLE OR ADVANTAGEOUS TO THE CITY OF MIAMI TO ENTER INTO A REVOCABLE LICENSE AGREEMENT WITH EVENT ENTERTAINMENT GROUP, INC. ("LICENSEE") FOR THE PRESENTATION OF AN ANNUAL ULTRA MUSIC FESTIVAL AT THE MARINE STADIUM SITE AND VIRGINIA KEY BEACH SITE ON THE TERMS AND CONDITIONS, INCLUDING USE FEE, USE PERIOD, AND OTHER TERMS SET FORTH IN THE REVOCABLE LICENSE AGREEMENT; FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE THE REVOCABLE LICENSE AGREEMENT WITH THE USER FOR THE ULTRA MUSIC FESTIVAL, IN SUBSTANTIALLY THE ATTACHED FORM, SUBJECT TO REVIEW AND APPROVAL BY THE CITY ATTORNEY.

**ENACTMENT NUMBER: R-18-0523**

<b>MOTION TO:</b>	<b>Adopt with Modification(s)</b>
<b>RESULT:</b>	<b>ADOPTED WITH MODIFICATION(S)</b>
<b>MOVER:</b>	<b>Manolo Reyes, Commissioner</b>
<b>SECONDER:</b>	<b>Keon Hardemon, Chair</b>
<b>AYES:</b>	Hardemon, Gort, Carollo, Reyes
<b>NAYS:</b>	Russell

***Note for the Record: For additional minutes referencing Item PH.4, please see "Public Comment Period for Regular Item(s) and "End of Consent Agenda."***

*Chair Hardemon: PH.4.*

*Daniel Rotenberg (Director): PH.4. Good afternoon, Commissioners. Daniel Rotenberg, with Department of Real Estate & Asset Management. PH.4 is a resolution of the Miami Commission, approving City Manager's recommendation, allowing the City of Miami to enter into Revocable License Agreement with Event Entertainment, the Annual Ultra Music Festival.*

*Commissioner Carollo: Which music festival?*

*Mr. Rotenberg: Ultra.*

*Chair Hardemon: Was there a presentation or anything, besides what you just read into the record that needed to be made? Sir, you're recognized.*

*Miguel De Grandy: Thank you, sir. Mr. Chairman, Commissioners, for the record, my name is Miguel De Grandy, and along with my partner, Richard Perez, we represent Event Entertainment Group. Commissioners, the Ultra Music Festival is, without question, the most important electronic music event in the world.*

*Commissioner Carollo: I'm glad you clarified that it's electronic music event.*

**EXHIBIT B**  
**LICENSE AGREEMENT**

## REVOCABLE LICENSE AGREEMENT

**THIS REVOCABLE LICENSE AGREEMENT** hereinafter referred to as this "Agreement," made this 21<sup>st</sup> day of February 2019, by and between the CITY OF MIAMI, a municipal corporation, with offices at 3500 Pan American Drive, Miami, Florida 33133, hereinafter referred to as the "City," and EVENT ENTERTAINMENT GROUP, INC., a Florida for-profit corporation, with offices located at 201 S. Biscayne Blvd., Suite 800, Miami, Florida 33131, hereinafter referred to as "Licensee" (collectively, the "Parties").

### RECITALS

**WHEREAS**, the City is the owner of certain real property throughout Virginia Key, including but not limited to 3501, 3801, 3861 Rickenbacker Causeway and 4020 Virginia Beach Drive, Miami, FL 33149; and

**WHEREAS**, the Virginia Key Beach Park Trust is a limited agency and instrumentality of the City with responsibility to oversee and manage the Historic Virginia Key Beach Park, located at 4020 Virginia Beach Drive, Miami, FL 33149, subject to City Commission approval; and

**WHEREAS**, Licensee hosts an annual electronic music festival ("Ultra Music Festival"); and

**WHEREAS**, Licensee wishes to use the Property (as defined in Section 2.11) for the purpose of producing the Ultra Music Festival and with the 2019 production being scheduled to be produced on March 29, 30 and 31, 2019; and

**WHEREAS**, formal action by the City of Miami City Commission is required to authorize and accept this Agreement, and is a condition precedent to this Agreement's legal efficacy and validity;

**NOW, THEREFORE**, in consideration of the covenants and agreements hereinafter set forth, the receipt and sufficiency of which is acknowledged by the parties, the City hereby grants unto Licensee the privilege of entry upon and use of the Property, for the production of the Event and for uses incidental thereto, on the terms and conditions set forth in this Agreement.

1. **RECITALS:**

The above Recitals are true and correct and hereby incorporated into and made a part of this Agreement.

2. **DEFINITIONS:**

When used in this Agreement, the following terms shall have the specified meanings:

- 2.1 **ADDITIONAL CHARGES** have the meaning given to such term in Section 7.4 and as outlined in Exhibit C, attached and incorporated hereto.
- 2.2 **AGREEMENT** has the meaning given to such term in the preamble to this Agreement.
- 2.3 **CITY** means the City of Miami.
- 2.4 **CITY COMMISSION** is the local legislative body of the City of Miami who has ultimate control of the PROPERTY and the events held therein.
- 2.5 **EFFECTIVE DATE** has the meaning given to it in Section 3.3.
- 2.6 **EVENT** means the Ultra Music Festival, to take place at the Property on the Friday through Sunday on either one (1) of the last three (3) weekends of March or the first weekend of April during the

Term as described herein with operating hours of 2:00 p.m. on Friday to 2:00 a.m. on Saturday; 2:00 p.m. on Saturday to 2:00 a.m. on Sunday; and 2:00 p.m. on Sunday to 2:00 a.m. on Monday. The hours described herein are firm unless an amendment thereto is mutually agreed upon by the Parties.

- 2.7 **INDEMNITEES** mean the City, the Virginia Key Beach Park Trust, and all the City's and the Virginia Key Beach Park Trust's respective members, officials, officers, agents, assigns, successors, personnel, and employees.
- 2.8 **LIABILITIES** means all losses, costs, penalties, fines, damages, claims, expenses (including attorney's fees, interest, and costs), and liabilities.
- 2.9 **PERMITTED USES** has the meaning given to it in Section 3.1.
- 2.10 **PREMISES** means the entire Property, as defined in Section 2.11 and depicted in Exhibits A-1, A-2, and A-3, and such open spaces that may be required by the Licensee for the Event, and other such facilities of the Property as may be authorized by the City. Premises does not include the use of the physical stadium structure known as the Ralph Middleton Munroe Miami Marine Stadium.
- 2.11 **PROPERTY** collectively refers to the event space surrounding, but specifically excluding, Ralph Middleton Munroe Miami Marine Stadium, located generally at 3501 Rickenbacker Causeway, Miami, FL 33149, as shown on the attached Exhibit A-1; the land adjacent to Arthur J. Lamb Road, located generally at 3801 Rickenbacker Causeway, Miami, FL 331349, as shown on the attached Exhibit A-2; and the event and parking space operated by the Historic Virginia Key Beach Park Trust, located generally at 4020 Virginia Beach Drive, Miami, FL 33149, as shown on the attached Exhibit A-3.
- 2.12 **TICKET SURCHARGE** means the fees to be paid in accordance with the ticket surcharge rates expressly provided in Section 53-1 of the Code of the City of Miami, Florida, as amended.
- 2.13 **USE FEE** means the sum of Two Million Dollars (\$2,000,000.00), that the Licensee shall pay the City for each yearly Event produced at the Property and Premises. The Use Fee shall be increased annually by Three percent (3%) commencing upon the production of the third (3rd) Event and such Use Fee includes the Ticket Surcharge. Such Use Fee is more particularly described in Section 7 herein.
- 2.14 **USE PERIOD** means the Thirty-Five (35) day period inclusive of load in and load out and ancillary preparations and removals, as applicable, that begins at approximately 7:00 a.m., Eighteen (18) days prior to each Event, and ends at 11:59 p.m., Fourteen (14) days after the conclusion of each Event. These dates are subject to mutual agreement of the parties on an annual basis, as more particularly set forth in Section 3.2.
- 2.15 **LICENSEE** has the meaning given to such term in the preamble to this Agreement.

### 3. **EVENT AND USE PERIOD:**

#### 3.1 **Purpose:**

The Property shall be used and occupied by the Licensee solely for the purposes of producing the Event and for undertaking any and all uses ancillary and incidental thereto, selling, using or displaying any goods and/or products related to the Event, and to grant to third parties the right to sell, use or display any goods or products on, to, or from the Property (collectively the "Permitted Uses"). Licensee may request written consent from the City Manager or their designee to use the Property for other allowed uses but shall not be authorized until Licensee has received the written

consent of the City Manager or their designee, which consent may not be unreasonably conditioned, withheld or delayed. Unless otherwise expressly and specifically provided hereunder, Licensee shall be solely responsible for the production, coordination and management of the Event, at its sole cost and expense.

This Agreement solely authorizes Licensee to the temporary use of the Property for the limited purposes set forth herein and for no other purpose. The Parties hereby agree that, the provisions of this Agreement do not constitute a lease or confer any leasehold rights or estate. The rights of Licensee hereunder are not those of a tenant, but merely authorization to do certain acts of a temporary character on the Property and to use the Property, subject to the terms of this Agreement. The City retains dominion, possession and control of the Property. Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Property by virtue of this Agreement, its use of the Property, or by virtue of any expenditure of funds by the Licensee for improvements, construction, repairs, partitions, or alterations to the Property which may be authorized by the City Manager or his/her designee.

### **3.2 Event Use Period**

The Event will, at the option of Licensee, take place at the Property on the Friday through Sunday on either one of the last three (3) weekends of March or first weekend of April, or other date mutually agreed upon by the Licensee and City Manager, for each Event year. The specific weekend for the Event shall be designated by Licensee and City in conjunction with the notice Licensee is required to deliver to the City pursuant to Section 9.4 described herein. The dates for the Event in 2019 are March 29, 30, and 31. Licensee and City shall use commercially reasonable efforts to coordinate the Use Period in a manner that does not conflict with other major events on the Property. Without limiting the foregoing, the Event date selected (and corresponding Use Period) shall not conflict with the dates afforded to National Marine Manufacturer's Association's ("NMMA") use period per the revocable license agreement between NMMA and the City originally approved by Resolution No. R-15-0009. The operating hours of the for the Event days shall be: from 2:00 p.m. on Friday to 2:00 a.m. on Saturday; 2:00 p.m. on Saturday to 2:00 a.m. on Sunday; and 2:00 p.m. on Sunday to 2:00 a.m. on Monday. The aforementioned times shall be fixed and apply to the Event throughout the Term of this Agreement. Licensee will occupy the Property for no more than thirty-five (35) days including load in to load out. Set-up for the Event will begin at the commencement of the Use Period and tear-down will terminate no later than the end of the Use Period each year. Any use of the word "day" or "days" throughout this Agreement shall mean calendar days, unless specifically stated otherwise.

### **3.3 Term:**

There is no stated or expressed term for this Agreement. As a revocable license, it has an indefinite term and may be terminated or revoked for convenience at the will of the City Manager and as otherwise provided in this Agreement. The Effective Date of this Agreement is the execution date of the Agreement by the last of the Parties and shall continue until terminated by any means available in this Agreement. Licensee acknowledges that this is a revocable license agreement authorizing a specific use for a limited time per year, subject to various other limitations specified herein; and that it does not convey, pledge, hypothecate, or confer any right, title or interest in any City-owned real property.

### **3.4 Termination**

**3.4.1 With Cause:** Each party agrees to abide by every term and condition of this Agreement. If either party materially breaches the terms, restrictions or conditions of this Agreement, then the nonbreaching party shall give the breaching party twenty (20) days written notice within which to cease such violation or correct such deficiencies. Upon the breaching party's failure to do so, the nonbreaching party may cancel this Agreement upon giving ten (10) days written notice to the breaching party and thereafter the Agreement shall be



automatically canceled without the necessity for further action by the nonbreaching party. Termination for cause shall include, without limitation, any one of the following acts or omissions: (a) Failure to pay any payment or any portion thereof within ten (10) days of due date; (b) Failure to carry insurance as required in this Agreement; or (c) Failure to comply with any material terms or conditions of this Agreement, including, but not limited to, conditions expressly set forth in Sections 5, 6 and 13.

**3.4.2 Without Cause:** Licensee or City may, at its option and without the other party's consent, terminate this Agreement upon at least three hundred and five (305) days' notice prior to the next subsequent Event. In the event of such termination by Licensee, the provisions of Section 9 (with respect to the Damage & Security Deposit) shall be applicable to all other obligations and duties shall be applicable.

**3.5 Reasonable Efforts:**

For purposes of this Agreement, the Parties shall use commercially reasonable efforts to assist and facilitate future productions of the Event to take place on the Property.

**4. PREMISES:**

**4.1 Restroom Facilities:**

Licensee hereby agrees to provide adequate portable restroom facilities, which shall be open and operational during the Use Period.

**4.2 Control of Access:**

Licensee hereby agrees that the staff and management of the City, in consultation with the Miami Police Department and Licensee, have complete control as to when gates to Events are opened. Licensee hereby agrees to respond to any reasonable City request during the Use Period of the Event.

**4.3 Sound Checks:**

Licensee hereby agrees that there will be no sound checks before 12:00 noon or after 2:00 a.m. on any weekday (Monday through Friday).

**4.4 Light Checks:**

The City hereby agrees that Licensee shall be permitted to conduct light checks on the eve of, and prior to, each Event day.

**4.5 Sound Level:**

Licensee's Event may not exceed a maximum level of One Hundred Ten (110) decibels measured 60 feet away from each stage. Failure to cure each incident of sound level non-compliance within five (5) minutes of notification by a City designee will result in a fee of \$1,000.00 per each incident. Each incident shall constitute a separate event of non-compliance. Licensee shall provide onsite personnel to monitor the sound level at all times during the Event, at Licensee's sole cost and expense.

**4.6 Time of Event:**

Licensee hereby agrees the Event must end by 2:00 a.m. on each day of the Event. Licensee shall pay a time overage fee of \$1,000.00 for every single minute, or a fraction thereof, if the Event continues beyond 2:00 a.m. This overage fee is in addition to all other fees and costs for which Licensee is responsible under this Agreement. Each minute shall constitute a separate event of non-compliance

**4.7 Alcohol Wrist Band Policy:**

Licensee hereby agrees that if alcoholic beverages are vended at the Event, Licensee will use alcohol wrist-banding staff to ensure consumers of alcohol are of the appropriate legal drinking age. Licensee or Licensee's concessionaire shall obtain all required permits required by law. Failure to comply with this rule, whether by the concessionaire or their representative, may result in the immediate cancellation of alcohol sales and breach of this Agreement, as determined by the City Manager or City Manager's designee.

**4.8 Dispensing of Alcoholic and Non-alcoholic Beverages:**

**4.8.1** Licensee shall not sell beverages, alcoholic or non-alcoholic, in glass or polystyrene foam containers of any size. Additionally, Licensee shall use reasonable good faith efforts to minimize the use of plastic products near environmentally sensitive areas.

**4.8.2** Licensee hereby agrees to dispense a maximum of two (2) alcoholic beverages per person at time of purchase.

**4.8.3** Licensee hereby agrees that sales of alcoholic beverages will stop sixty (60) minutes prior to the end of the Event. Sales of non-alcoholic beverages shall not be subject to this restriction.

**4.8.4** Licensee is responsible to secure all governmental permits and approvals required by applicable laws and regulations for the sale and dispensation of alcoholic beverages. All required liquor permits shall be filed with the City Manager at least ten (10) days before the commencement of the Event.

**4.9 Sponsor's Signage and Banner Placement:**

City hereby agrees that Licensee may place signage and banners in the Property during the Use Period subject to the approval of the City's Director of Real Estate and Asset Management and such approval may not be unreasonably withheld, delayed or conditioned. Licensee shall ensure that all signage and banners are permitted and comply with City and County Sign and Zoning Regulations. Licensee shall secure all required permits and approvals for such signage and banners and shall remove all signage and banners prior to the end of the Use Period.

**4.10 Non-Exclusivity:**

This Agreement confers no exclusive possession of the Property, provided however, the City agrees not to enter into another License or Use Agreement on this Property that would interfere with Licensee's ability to operate for the Permitted Uses on the Property according to the terms of this Agreement. The City agrees not to use or permit others to use the Property under the control of the City during the Use Period except as mutually agreed by the City and Licensee. Licensee recognizes and agrees that the Property is a public site and during the entirety of the Use Period, the Licensee will cooperate with the City to maximize public access to the Property. This will not be construed to prevent the Licensee from restricting access to the Event.

**4.11 Exclusivity**

The Event shall be the only multi-day multi-stage music festival to be produced at, and utilizing, the entire Property. The City shall not authorize or make the Property available to another producer of a multi-day multi-stage music festival or similar music-based event, with over 30,000 patrons expected per day, during the Use Period for each year in which the Event takes place, and including sixty (60) days before Licensee's first Event day and sixty (60) days after the Use Period, for the term of this Agreement. The City acknowledges and agrees that the restrictions described in this Section are reasonably necessary to protect the legitimate business interests of Licensee.

#### **4.12 Limited Use**

The City agrees that it will not license any individual portion of the Property to any multi-day multi-stage music festival or similar music-based event, with over 30,000 patrons expected per day, for the Use Period and including sixty (60) days before Licensee's first Event day and concluding sixty (60) days after the Use Period, for the term of this Agreement. The City acknowledges and agrees that the restrictions described in this Section are reasonably necessary to protect the legitimate business interests of Licensee.

#### **4.13 Improvements:**

Licensee shall not make any permanent improvements or erect any permanent structures whatsoever to or on the Property without the prior written approval of the City, which may be refused or conditioned in the City's sole discretion. As of the Effective Date and throughout the Use Period, all buildings and permanent improvements thereon are vested in the City. Furthermore, title to permanent improvements and all alterations made in or to the Property, whether or not by or at the expense of Licensee, shall, unless otherwise provided by written agreement, immediately upon their completion, become the property of the City and shall remain with the Property. Licensee shall leave the Premises in a condition equal to or better than provided prior to each Event, as further detailed in Section 5 below.

#### **4.14 Third-Party Agreements:**

The City agrees to make reasonable efforts, at no cost to the City and subject to existing agreements, to assist Licensee in obtaining access or use agreements with third party operators and with other operators on City-owned property for use by the Licensee during and in support of the Event. Licensee is responsible to, and shall be required to safeguard, maintain, protect and preserve the egress, ingress and access of all neighboring businesses and users existing as of the Effective Date of this Agreement to the extent such entities are affected by the Licensee's use of the Property including, without limitation, the Virginia Key Outdoor Center, the Rusty Pelican, the Miami Rowing Club, Atlantica at Bayside Hut, Key Biscayne Marine Station, the adjacent marinas, Miami Seaquarium, and the Miami-Dade County Water and Sewer Department facility. Licensee will be additionally responsible for negotiating any agreements or arrangements with such third parties, to the extent not otherwise expressly prohibited herein. Additionally, Licensee shall preserve the egress, ingress, and access of neighboring businesses and users entering into a lease, license, or other agreement or permit with the City to use any portion of the Property after the Effective Date of this Agreement, and the Licensee shall enter into good faith negotiations with the City to minimize any monetary impact to those third-party entities. After the Event, Licensee shall use commercially reasonable efforts to prioritize the removal of fencing and barricades on the Property, subject to safety and other requirements, in order to ensure maximum public use of the Property.

The Licensee understands and accepts the City's current Exclusive Concession Agreement, approved by Resolution R-15-0227, with Eventstar Structures, Corp. ("Eventstar") and shall use Eventstar for any tent structures intended to be placed on the Marine Stadium Area shown on Exhibit A-1, subject to the term and limitations contained in such agreement. The Parties understand and agree that stages used for the Event are separate and apart from tent structures.

Licensee shall, in good faith, endeavor to use vendors that are minority-owned, Certified Small Business Enterprises, local, and/or which otherwise provide benefits to historically underprivileged areas/populations within the City of Miami. Licensee's failure to comply with this provision shall not constitute a material breach of this Agreement, nor shall the City be entitled to any audit rights respecting Licensee's vendor selection practices.

#### **4.15 Traffic Management Plan**

On December 20, 2018 for the 2019 Event, and thereafter One Hundred and Twenty (120) days prior to each Event, Licensee shall prepare and submit to the City Manager for City's review and

written approval, a traffic management plan setting forth the operational strategies for managing event-generated and background traffic on the day(s) of the Event within the Property and general region to ensure safe means of access to the site and to minimize traffic disruptions on Rickenbacker Causeway. As to the 2019 Event, the City acknowledges receipt of Licensee's preliminary Traffic Management Plan on December 20, 2018. The City shall not unreasonably delay, condition and/or deny such approval. The Licensee will work with the police departments of Key Biscayne, Miami, and Miami-Dade County in order to receive and consider their input on traffic management. Licensee shall also hire, at its sole cost and expense, traffic management experts to consult with Licensee and the City concerning the proper traffic management strategies.

The traffic management plan must (1) indicate how traffic, parking, and pedestrian operations will be managed on the day(s) of the Event, (2) coordinate and mitigate transportation impacts, and (3) adapt to traffic demand scenarios, demand management plan, and contingencies. At a minimum, the traffic management plan shall include: (1) Traffic flow route planning, inclusive of the consideration of a dedicated lane for traffic coming to or from Key Biscayne during the Event; (2) Site access and parking planning, inclusive of the limitation of on-site parking to "VIP" guests, Licensee's officials, or public safety personnel; (3) Pedestrian access planning; (4) Traffic control planning; (5) travel demand management and transit service planning, inclusive of the use of ferries, water taxis, ride-sharing programs, and/or shuttle bus services; (6) Incident management and traveler information planning; and (7) Access routes and planning for those businesses referenced in Section 4.14, and other nearby businesses on Virginia Key impacted by the Event.

#### **4.16 Environmental Management and Remediation Plan; Wildlife Plan**

Sixty (60) days prior to each Event, Licensee shall prepare and submit to the City Manager for City's review and written approval, an Environmental Management and Remediation Plan setting forth the preventative measures that will be undertaken by Licensee to avoid damage to, or contamination of, environmentally sensitive habitat, vegetation, or preserved areas. Such plan shall also identify environmental mitigation and remediation activities so as to minimize any actual or potential adverse impacts and to provide adequate protection to such areas. Licensee shall also hire an environmental expert and consultant to ensure compliance with the various environmental responsibilities of Licensee set forth in this Agreement. In the event of a dispute between the Licensee and City as to Licensee's compliance with Licensee's various environmental responsibilities, such dispute shall be resolved by the third party environmental expert and consultant mutually agreed to by the City Manager or designee and Licensee and paid for at the Licensee's sole cost and expense. The City shall not unreasonably delay, condition and/or deny such approval.

The Environmental Management and Remediation Plan must: (1) disallow any access, by fencing and barricading, to the Historic Commodore Ralph Middleton Munroe Marine Stadium; and (2) disallow any access, by utilizing appropriate fencing, to the prohibited areas on Exhibit D, including potentially racetrack level fencing.

Licensee shall include a separate Wildlife Management Plan and Remediation Plan, as an independent section within the Environmental Plan, or presented concurrently by Licensee to the City Manager as a separate plan, at the option of the Licensee, addressing all measures to avoid impacting all wildlife, including both aquatic (marine) and land wildlife, and measures taken to safeguard such wildlife that could be impacted by the Event. The Wildlife Management Plan will be prepared by a recognized wildlife expert. Licensee's wildlife expert and consultant will also to ensure compliance with the various wildlife measures of Licensee set forth in this Agreement. In the event of a dispute between the Licensee and City as to Licensee's compliance with Licensee's various wildlife responsibilities, such dispute shall be resolved by the third-party wildlife expert and consultant mutually agreed to by the City Manager or designee and Licensee and paid for at the Licensee's sole cost and expense.

Licensee shall have, at its sole cost and expense, the qualified staff necessary to supervise and monitor the protection of sensitive environmental areas and wildlife throughout the Use Period and Event. The requirements of such onsite staff shall be specified in the Environmental Management and Wildlife Management plans and shall be subject to the City's review and approval.

Together with the Environmental Management and Remediation Plan and Wildlife Management and Remediation Plan, and at the option of the City Manager, Licensee shall be required to submit to the City an Environmental Surety Bond in an amount determined by the City Manager using, and based on, commercially reasonable standards when factoring Licensee's damage and security deposit, insurance coverage limits, and past payment history, among other factors, to guarantee compliance with all environmental requirements expressly provided for in this Agreement, including, but not limited to, compliance with all environmental laws. To the extent applicable, the form of the Bond shall be approved by the City Manager or the Risk Manager as the Manager's designee and by the City Attorney as to legal form.

Prior to the Event scheduled for the year 2019, Licensee shall provide to the City, at Licensee's sole cost and expense, an Environmental and Wildlife report detailing and setting forth a baseline study and assessment of the Event's anticipated effects on the local environment and wildlife.

Notwithstanding any language contained herein to the contrary, if Licensee has knowledge of any changes to the Environmental Management and Remediation Plan that are materially different from the plan submitted for the immediately preceding Event, Licensee shall provide the updated Environmental Management and Remediation Plan a minimum of One Hundred and Twenty (120) days prior to the subsequent Event date.

#### **4.17 Safety and Security Plan**

On December 20, 2018 for the 2019 Event, and thereafter One Hundred and Twenty (120) days prior to each Event, Licensee shall prepare and make available to the City Manager for City's review and written approval, a Safety and Security Plan setting forth the various efforts to be undertaken by Licensee to ensure the safety and security of the patrons of the Event. The City shall not unreasonably delay, condition and/or deny such approval. The Safety and Security Plan shall include, without limitation: (1) a mass evacuation plan, (2) stage locations, (3) fencing locations, (4) security and emergency operations personnel requirements, (5) emergency vehicle access routes, (6) communications plan, and (7) any other necessary safety and security components required by the City's Police and Fire departments.

### **5. CONDITION OF PREMISES AND REQUIRED RENOVATIONS:**

- 5.1 Licensee has inspected, or has been given the opportunity to inspect, the Premises, prior to execution of this Agreement, and accepts it in its present condition and agrees to restore and return the same in the pre-load-in condition. The City shall maintain the Property on a year-round basis and shall be responsible for replacing and restoring elements on the Property which are damaged (unrelated to Licensee's use). Specifically, Licensee agrees that it shall replace or restore to their original condition, any and all components of the Property, including but not limited to infrastructure, electrical or fiber-optic cables/lines, grass or trees, including necessary irrigation, if any, and decorative and play structures, which are damaged due to the Event. All replacement or restoration shall be in a manner satisfactory to the City, in the City's sole discretion.
- 5.2 Licensee shall repair and make the Property available for public use immediately after the Use Period. Licensee shall complete all restoration no later than June 1 following each Event, annually. Licensee shall make a qualified representative available (for whom the City shall retain approval

rights provided that the City make the Property available to Licensee to undertake such repairs and restoration and provided that the City does not cause or contribute to any delays in the repairs or restoration) to review, discuss and implement a course of action as a result of damages to the Property in accordance with the terms mentioned in Section 9, Damage & Security Deposit. Should Licensee fail to complete the Property's restoration by June 1 following each Event annually, the City Manager shall, subject to the foregoing, have the sole option to elect to begin deducting \$10,000.00 per day from the \$250,000.00 Damage & Security Deposit for each day the restoration remains incomplete. Licensee understands that if the Property is not cleared of any and all production equipment, including electronics, supplies, and personal property by the expiration of the Use Period following notification to Licensee and, unless it has made other written arrangements with the City Manager or designee, a \$10,000.00 per day fee may be imposed until the Premises has been cleared.

- 5.3 The Parties acknowledge that Licensee upon occasion shall have the right, but not the obligation, to make certain temporary renovations to the Property in order to produce the Event, with such temporary renovations occurring at Licensee's sole cost and expense. The City shall not have any obligation to Licensee, financial, contractual or otherwise, arising out of temporary renovations. Any temporary renovations shall be performed in a manner acceptable to the City and shall minimize impacts to visitors of the Property.
- 5.4 Licensee acknowledges that it will not access or use the Ralph Middleton Munroe Miami Marine Stadium, unless and until the Stadium has been restored, and then only after the City Manager provides written authorization, subject to all additional terms or restrictions imposed in the sole discretion of the City.
- 5.5 Licensee will use reasonable efforts to maintain the Property and surrounding areas clean from any waste during the Use Period, including, for example, the implementation of environmentally sensitive turbidity control measures. Historically designated areas or environmentally sensitive habitat, vegetation, or preserved areas, including, but not limited to, the areas specifically designated on the attached Exhibits D-1, D-2, and D-3, shall not be damaged or disturbed by Licensee. Licensee shall further take appropriate measures to protect environmentally sensitive areas of the Premises, including those specifically identified in Exhibit E, such measures being detailed in the Environmental Management and Remediation Plan.
- 5.6 Licensee acknowledges and accepts that it will not access or use the Virginia Key Beach Park Trust's offices or identified historic buildings and sensitive areas on the Historic Virginia Key Beach Park, attached and incorporated herein as Exhibits D-1, D-2, and D-3. Usage of such buildings on the Virginia Key Beach Park is subject to the written approval of the City Manager or his designee.

## **6. COMPLIANCE WITH PERMITS AND LAWS:**

- 6.1 Licensee represents and warrants that during the term of this Agreement, in connection with the Event, it will obtain and maintain all required permits and approvals. The City will assist Licensee in obtaining permit(s) from governmental agencies including the Police and Fire Departments of the City of Miami. Police Department and Fire Department manpower and equipment requirements shall be determined by the respective Department and presented to Licensee at least ten (10) business days prior to the Event.
- 6.2 Licensee represents and warrants that during the term of this Agreement, it will not use or employ the Premises, or any other City owned property, to handle, transport, store or dispose of any hazardous materials and that it will not conduct any activity on the Premises or other City-owned property in violation of any applicable environmental laws.

- 6.3 Licensee represents and covenants that it will comply, and require its concessionaires to comply, with all applicable laws, codes and ordinances, including, but not limited to, the Americans with Disabilities Act ("ADA"), the Florida Building Code, all laws prohibiting discrimination, planning, zoning, traffic, environmental laws, and regulations.
- 6.4 Licensee represents and warrants that it is aware of the restrictions contained in Sections 22-180 through 22-185 of the Code of the City of Miami entitled "Handbills" and that it will comply with all of the requirements therein with respect to the distribution of commercial handbills. Should Licensee fail to comply, it shall be responsible for the payment of any fine the City may impose upon the City. Payment for fines imposed must be made within ten (10) days of receipt thereof.
- 6.5 Licensee accepts this Agreement and hereby acknowledges that Licensee's strict compliance with all applicable federal, state and local laws, permits, approvals, ordinances, rules, and regulations (collectively sometimes referred to as: "law" or "laws") is a condition of this Agreement, and Licensee, and any of its employees, agents or performers, shall comply therewith as the same presently exist and as they may be amended hereafter. This Agreement shall be construed and enforced according to the laws of the State of Florida.

**7. USE FEE:**

- 7.1 The Use Fee that is hereby agreed to by Licensee, to be paid by Licensee to the City is Two Million Dollars (\$2,000,000.00) for each Event that occurs on the Property under the terms of this Agreement, subject to an increase of Three percent (3%) annually commencing upon the production of the third (3<sup>rd</sup>) Event, such increase applying yearly to each Event thereafter through the termination of this Agreement.
- 7.2 The Use Fee includes the Ticket Surcharge as defined in Section 2 of this Agreement. The Use Fee is an unconditional and absolute payment due the City regardless of any ticket shortfalls, reductions in ticket sales, ticket price or sale fluctuations, or the number of tickets sold by the Licensee for the Event. The Use Fee is due as a net payment to the City without any deductions made for service charges, utilities, taxes, allowable offsets, Additional Charges as described herein, and any similar credits. The Ticket Surcharge as described herein and outlined in Section 53-1 of the Code of the City of Miami, as amended, shall be applicable to all Event tickets sold, as well as complimentary tickets in excess of 3,000. In the event the Ticket Surcharge due to the City in accordance with Code Section 53-1 exceeds the Use Fee, the City shall be entitled to the greater of the Ticket Surcharge or the Use Fee. Notwithstanding any language to the contrary, under no circumstances will the City ever receive less than the Use Fee. For example, if the Ticket Surcharge in effect at any time would result in Ticket Surcharge collections of \$2,700,000 (based on tickets sold and complimentary tickets in excess of 3,000) for an Event, and the Use Fee payable to the City under Section 7.1 for that Event is \$2,000,000, then Licensee would pay the City \$2,700,000 in full satisfaction of Licensee's obligations under both Sections 7.1 and 10.1.
- 7.3 In consideration of the use of the Property, Licensee shall be responsible for all costs and expenditures associated with the production of the Event, and Licensee shall compensate the City by payment of the Use Fee as defined in this Agreement. The Use Fee shall include fees for use of the Premises on load-in and load-out days and Event Days, the Ticket Surcharge and fees for use of the Property.
- 7.4 The Use Fee shall cover all fees associated with the use of the Property by Licensee. The Use Fee is for the temporary use of the Property, as specified in this Agreement, and does not include any services provided by the City, and specifically excludes Additional Charges, which may be incurred by Licensee, such as agreed-upon clean-up services, police, fire-rescue, utilities,

sanitation, landscaping, and other charges set forth in Exhibit C ("Additional Charges"). The final cost of any Additional Charges shall be determined by the City upon presentation of invoices to Licensee following a prior estimate by the City of the various service providers, as applicable.

7.5 Under no circumstances will the City be liable for any costs or expenses incurred by Licensee under this Agreement or as a result of its operations or related activities beyond those that are expressly and specifically set forth in this Agreement. Licensee shall be responsible for all costs involved in the production of the Event, including without limitation: all BMI and ASCAP copyright and license fees, any intellectual property fees, all staffing and all charges for police, fire rescue, inspectors, building and/or assembly permits, security, insurance, all utilities, supplies, equipment rental, ticket surcharge, all applicable taxes, including State of Florida Sales and Use Tax, any other governmental levies and impositions imposed by law, and other services. Licensee may engage any vendor(s) it elects to contract with, and Licensee is not required to use City-approved vendors, except as otherwise specifically provided by law or in this Agreement. The preceding sentence does not apply to service furnished by City employees.

7.6 The City reserves the right to interrupt, curtail or suspend the provision of any utility service, including but not limited to, heating, ventilating and air conditioning systems and equipment serving the Property, to which Licensee may be entitled hereunder, when necessary by reason of accident or emergency, or for repairs, alterations or improvements in the judgment of the City Manager desirable or necessary to be made or due to difficulty in obtaining supplies or labor, or for any other cause beyond the reasonable control of the City. The work of such repairs, alterations or improvements shall be prosecuted with reasonable diligence, and to the extent that substantial repairs, alterations, improvements and/or construction is contemplated or scheduled to occur during the Use Period, Licensee shall be promptly notified by the City of such scheduled repairs, alterations, improvements and/or construction. The City shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Licensee or for any limitation of supply resulting from governmental orders or directives. Licensee shall not claim any damages by reason of the City's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Licensee's obligations hereunder be affected or reduced thereby.

## **8. TERMS OF PAYMENT:**

8.1 Licensee shall submit to the City, by wire transfer, cashier's check, or money order, by March 8<sup>th</sup> every year the Event will take place, and in any event no later than 5:00 p.m., two (2) days prior to the commencement of the Use Period, the Use Fee, and any estimated additional charges, and Licensee shall have fully and timely replenished the Damage & Security Deposit by the dates outlined herein.

8.2 All amounts due to the City in excess of the Use Fee or in excess of the estimated Additional Charges, including all pass-through costs, shall be remitted to the City the later of (i) thirty (30) days following the conclusion of the Event or (ii) ten (10) days after Licensee's receipt of such invoice(s).

8.3 If any installment of the Use Fee or any other undisputed sum due from Licensee shall not be received by the City on the date such undisputed sum is due, Licensee shall pay to the City an interest rate equal to five percent (5%) per annum of such overdue amount. If the undisputed sum due is not received by the City within fifteen (15) days after the date on which such undisputed sum is due, the Five percent (5%) interest rate will be replaced with an interest rate equal to Eleven and One Half (11.5%) per annum of such overdue amount. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs the City will incur by reason of late payment by Licensee. Acceptance of such late charge by the City shall not constitute a waiver of



the Licensee's default with respect to such overdue amount, nor prevent the City from exercising any of its other rights and remedies granted hereunder or at law or in equity. The terms of this Section shall not apply to any charges which are the subject of a good faith dispute which are controverted in writing, setting forth with reasonable specificity all pertinent details by the party seeking to avoid payment, within ten (10) days of the due date.

**9. DAMAGE & SECURITY DEPOSIT; DATE DESIGNATIONS:**

- 9.1 The Damage & Security Deposit shall be in the amount of Two Hundred and Fifty Thousand dollars (\$250,000.00) and shall be subject to the applicable terms of this Agreement. The Damage & Security Deposit is intended to secure performance of all of Licensee's obligations hereunder, including but not limited to the repair and restoration of the Property after the Event. In addition, the Damage & Security Deposit is intended to secure Licensee's request for future dates through the end of the term of this Agreement.
- 9.2 A joint inspection of the Premises by the parties will be made within Two (2) business days after the completion of each Event and/or upon the expiration of the Use Period, wherein the short-term and long-term repairs to the Property will be identified. The Damage & Security Deposit will be held by the City until such time as all the repairs are completed or it is depleted by Licensee's failure to complete the restoration within the allotted time. The Damage & Security Deposit shall also be applied toward payment of any fees, liens, costs or other assessments against the Property or the City for activities and operations of Licensee directly resulting from or related to the Event. In the event the amount necessary to repair the damages or satisfy Licensee's obligations hereunder exceeds the Damage & Security Deposit, then Licensee agrees to pay the balance to the City within Ten (10) business days of the City's written request.
- 9.3 Nothing in this Agreement shall be construed as constituting the consent or request of the City, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials, for any specific work on the Property nor as giving the Licensee the right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any liens against the City's interest in the Property. If any liens shall at any time be filed against the Property, the Licensee shall initiate steps to cause it to be discharged of record within thirty (30) days after the date that it has notice of its filing. Licensee's failure to comply with this Section shall be a material breach of this Agreement by the City Manager for cause.
- 9.4 Licensee further agrees to inform the City by July 1 of every subsequent Event year, of the requested dates on which the Event shall be scheduled, or otherwise shall inform the City of its intentions not to produce the Event during the Use Period for the subsequent dates for the immediately following year. If Licensee does not affirm its intention of not holding the Event, the Damage & Security Deposit will be held to secure performance of all Licensee's obligations. Licensee's failure to inform the City of Licensee's intention to not hold the Event by the above-stated deadlines, shall be deemed an affirmation by Licensee of its intention to continue to use the Property so long as the License is in effect. Cancellation of the Event after Licensee's affirmation to the City of its intention to use the Property shall result in forfeiture of the Damage & Security Deposit.
- 9.5 Similarly, in the event the Damage & Security Deposit falls below \$250,000.00 after Licensee completes all necessary repairs to the Property, Licensee shall timely and fully replenish up to the full amount of \$250,000.00 within Ten (10) business days of the City's written request.
- 9.6 If Licensee fails to remove any personal property, equipment and fixtures from the Property within Twenty-Four (24) days following the close of the Use Period and notification by the City to

Licensee and following Licensee's failure to remove such personal property, equipment and fixtures from the Property, then said property shall be deemed abandoned and thereupon shall become the sole personal property of the City. The City, at its sole discretion and without liability shall remove the same and Licensee shall reimburse the City for all costs associated with such removal and disposal within Ten (10) business days following such removal. Licensee will be liable for any costs, including removal and/or storage, incurred by the City for Licensee's failure to timely remove personal property, equipment and fixtures from the Property.

- 9.7 Licensee shall not be entitled to receive any interest on the Damage & Security Deposit. As this Agreement is a license, the Parties stipulate that Chapter 83, Florida Statutes, does not apply to the Damage & Security Deposit, and this is not a lease agreement.

## **10. TICKETS:**

### **10.1 Ticket Surcharge:**

For purposes of this Agreement, the City acknowledges and agrees that all applicable ticket surcharges as stated in Section 53-1, of the Code of the City of Miami, as may be amended, that are due to the City are inclusive in the Use Fee, unless the total Ticket Surcharge due to the City under such Code Section 53-1 exceeds the Use Fee. Licensee shall pay to City all Ticket Surcharge fees to the extent that they exceed the Use Fee, as provided in Sections 7.1 and 7.2 herein. Licensee agrees to pay all applicable taxes, merchant, and service charges related to tickets.

### **10.2 Complimentary Tickets:**

Subject to those terms set forth in Section 7, Licensee shall have right to distribute up to 3000 complimentary tickets per each Event day for promotional use without payment of a ticket surcharge. Complimentary tickets distributed by the Licensee in excess of 3000 per each Event day shall have a face value of not less than the highest priced general admission ticket of each Event year for purposes of calculating and remitting the ticket surcharge.

### **10.3 Ticket Policy:**

10.3.1 Licensee agrees that all ticketed events in the Property, to include the Event will be audited by the City Manager's designee relating to tickets sold by Licensee. There will be no exceptions.

10.3.2 Licensee agrees to submit a valid ticket manifest prior to the opening of the gates. There will be no exceptions. The City Manager's designee will report compliance or lack of compliance to the City prior to the gates being opened on day of the Event.

10.3.3 Failure to provide a valid ticket manifest may result in a non-compliance fee as outlined below. The fee will be assessed on all tickets counted by the City, including complimentary tickets. Fees shall be assessed as follows: 1,000 to 9,999 tickets - \$1,000.00 non-compliance fee; 10,000 to 19,999 tickets - \$2,000.00 non-compliance fee; and 20,000 + tickets - \$3,000.00 non-compliance fee

### **10.4 Ticket Scanning:**

In the event that Licensee employs a ticket scanning method (including barcode, RFID and other scanning technologies), City ticket scanning personnel will not tear tickets in half and a drop count will not be used. Additionally, Licensee shall provide sufficient back-up scanners in the event of any scanner malfunction. In the event of a complete scanner failure, the City may use alternative methods to maintain accurate counts of patrons attending the Event. Licensee will provide the City with a laptop loaded with a ticketing program that will track the scanned tickets making it possible to know how many patrons are in the facility at any time. In the event that the show's tickets are

sold out, the City and Licensee agree that ticket counting staff will not be required.

**10.5 Capacity:**

The total capacity for the Event shall not exceed 60,000 persons per day.

**11. ADVERTISING:**

All advertising for Event must state: (i) Miami, FL; Historic Virginia Key Beach Park & Miami Marine Stadium, (ii) Miami, FL; Marine Stadium & Virginia Key Beach Park or (iii) Miami, FL; Virginia Key, or some other derivative specifically acknowledging the City of Miami and using commercially reasonable efforts to specify the use of Miami Marine Stadium and Historic Virginia Key Beach Park. Licensee shall not permit any signs or advertising matter to be placed upon the exterior of the Property without having first obtained the written approval of the City Manager or their designee, which approval may not be unreasonably withheld, delayed or conditioned. Licensee shall, at its sole cost and expense, install, provide, maintain such sign, decoration, advertising matter or other things as may be permitted hereunder in good condition and repair at all times. Licensee must further obtain approval from all governmental authorities having jurisdiction and must comply with all applicable requirements set forth in the Sign Regulations in the City of Miami Code and Zoning Ordinance and the Miami-Dade County Sign Code, as applicable. Upon the end of each Use Period, Licensee shall, at its sole cost and expense, remove any sign, decoration, advertising matter or other item permitted hereunder from the Property. Licensee hereby understands and agrees that the City may, at its sole discretion, erect or place upon the Property an appropriate sign indicating City's having entered into this Agreement.

**12. FOOD & ARTS & MERCHANDISE LOCATIONS:**

Not later than sixty (60) days prior to the Use Period, the Licensee shall make available to the City, for the City Manager's approval, which approval shall not be unreasonably withheld, delayed or conditioned, a preliminary site plan setting forth the location of Licensee's installations and equipment on the Property, including, without restriction, the location of the Licensee's tents, ticket box office, concession and food stands, and vans. Final Site Plan shall be due to the City not later than thirty (30) days prior to the Use Period. The City Manager, or his designee, shall approve or disapprove, which disapproval shall state the reasons within five (5) business days after its receipt. The City and the City's Fire Department reserve the right to remove or revise the location of booths for the Event to the extent necessary for public health, safety and security during the Event.

**13. SECURITY:**

Licensee shall provide, at Licensee's cost, all necessary perimeter/t-shirt event security and police officers to be determined by the City of Miami Police Department and the City, including, but not limited to, an on-site special response team on site throughout the duration of the Event. In addition, the City may require extra fencing or security if it deems it necessary. The Licensee shall maintain access for City of Miami emergency vehicles on the Property at all times.

**14. PARKING**

To the extent Licensee will not be utilizing the portions of the Property constituting parking lots for staging, production, logistics or related purposes, and to the extent such parking lots are not needed to mitigate traffic or for other logistical reasons, all in the sole and absolute discretion of Licensee, then the City may allow public parking at such parking lots, the City shall conduct such parking operations at its sole expense, and the City shall retain one hundred percent (100%) of all parking revenues collected. The portion of the Property identified in Exhibit A-2 as Arthur Lamb Road Area will be used for parking. If the maximum available parking provided on the Arthur Lamb Road Area is insufficient under applicable law, or otherwise insufficient for Licensee's purposes, Licensee shall be responsible for obtaining additional parking required

at its sole cost and expense. All public parking on the Property shall be operated by the City or the City's designee.

**15. INSURANCE:**

Licensee shall obtain and maintain in force for the Use Period, insurance policies and coverages, as may be reasonably amended from time to time by the City's Director of Risk Management or designee using commercially reasonable standards, and as set forth on Exhibits B-1 and B-2 (B-1 is for the Licensee; B-2 is for the caterer), which is attached hereto and made a part of this Agreement. The City and the Virginia Key Beach Park Trust shall be named "Additional Insured" on all policies. Any questions regarding insurance should be directed to the City. Licensee shall furnish all required insurance certificates no later than ten (10) days prior to the commencement of the Use Period.

**16. INDEMNIFICATION:**

Licensee agrees to indemnify, defend (at its own cost and expense), covenant not to sue, and hold harmless the City, their respective officers, officials, employees, personnel, volunteers, agents, assigns, representatives, and successors, and the Virginia Key Beach Park Trust, their respective officers, officials, employees, personnel, volunteers, agents, assigns, representatives, and successors (hereinafter collectively referred to as the "Indemnitees") from and against all Liabilities to the extent arising out of, resulting from, or in connection with (i) the Event (including any claims or liabilities asserted by YMD Records, LLC d/b/a Rapture Electronic Music Festival and/or its affiliates claiming usage or contractual rights to any or all of the Premises for other events, and while Licensee controverts any Liability with respect to such matters it will Indemnify the Indemnitees pursuant to this Section 16), the use of the Premises and/or performance of any renovation to the Premises (including, but not limited to, the granting of this Agreement), (ii) the performance or non-performance of this Agreement, whether it is, or is alleged to be, directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of the Indemnitees, or any of them (except for the intentional, criminal or wrongful acts, or gross negligence or willful misconduct committed by such Indemnitees), (iii) the use of any products sold, advertised, provided, or otherwise distributed by Licensee to users, invitees, guests, employees, agents, the general public, or any other individual or (iv) the failure of Licensee to comply with any of the provisions contained herein, or to conform to statutes, ordinances, or other rules, conditions of approval, permits or regulations or requirements of any governmental authority, local, federal or state, in connection with the performance of this Agreement, including, without limitation all actions and omissions by the Licensee taken as a result of or in connection with this Agreement. This Indemnification shall cover liabilities in tort, liabilities in contract, liabilities alleging statutory or regulatory violations including, but not limited to claims resulting from noise, light, nuisance, traffic, and/or liabilities derived from any other actions or omissions alleged to impact the quiet enjoyment of residents, tenants, or commercial entities in the surrounding neighborhoods, or otherwise who reside within Five (5) miles of the Property. Licensee expressly agrees that this indemnification shall include all employees/personnel of the City, on and off-duty police officers, fire, and other emergency/medical service employees/personnel rendering services or support in connection with the Event. In addition, Licensee expressly agrees to indemnify, covenant not to sue, and hold harmless the Indemnitees, or any of them, from and against all Liabilities which may be asserted by an employee or former employee of Licensee, or any of its contractors, subcontractors, agents, representatives, concessionaires, vendors, invitees, guests, or consultants as provided above, for which Licensee's liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws. This Indemnification provision shall survive the expiration, termination, or cancellation of this Agreement and shall continue in effect until the expiration of the corresponding statute of limitations or the tolling thereof. The word Liabilities used in this Section includes claims and actions relative to the Liabilities. Granting of this Agreement is freely acknowledged by the Licensee as good and sufficient independent consideration for this Indemnification. To the extent that Licensee undertakes any indemnification obligations under this Section 16, and notwithstanding any provision herein to the contrary, Licensee shall have its choice of counsel for a defense and control resolution of the claim(s) provided the Indemnitees are not required to admit any liability or to make any payments.

17. **RISK OF LOSS:**

Except as set forth in the following sentence, the Indemnitees as described above, assume no responsibility whatsoever for any person or property that enters the Premises as a result of, or in connection with, the Event. In consideration of the execution of this Agreement by the City, Licensee releases the Indemnitees from any and all liability for any loss, injury, death, theft, damage or destruction to any persons or property to include, without limitation, those described above in Section 16 Indemnification, which may occur in or about the Premises and which loss, injury, theft, damage or destruction to any persons or property arises from Licensee's negligent acts or omissions. To the extent allowed by Florida Statute 768.28, Licensee does not release the City for any and all liability to the extent such liability is determined to be due to the intentional or willful misconduct or gross negligence of the City.

18. **DEFAULT PROVISION:**

In the event Licensee shall fail to comply with any material term and condition of this Agreement or shall fail to perform any of the material terms and conditions contained herein, then the City, at its sole option and in addition to all other rights and legal remedies available to it by law, upon written notice to Licensee, may cancel and terminate this Agreement [after providing Licensee with written notice of any material breach by Licensee and after allowing Licensee an opportunity of Twenty (20) days to cure such material breach or default] and all payments made by Licensee pursuant to this Agreement, shall be retained by the City. Licensee shall have no recourse against the City or Virginia Key Beach Park Trust from the provisions of this Section.

19. **AWARD OF AGREEMENT:**

Licensee represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon the award of this Agreement.

20. **PUBLIC RECORDS:**

Licensee understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable laws. Licensee's failure or refusal to comply with the provisions of this section shall result in the City's immediate cancellation of this Agreement. Licensee acknowledges that this termination is not subject to cure provisions contained elsewhere in this Agreement.

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS BY PHONE AT 305-416-1883; BY EMAIL AT [PUBLCRECORDS@MIAMIGOV.COM](mailto:PUBLCRECORDS@MIAMIGOV.COM); OR IN PERSON AT 444 SW 2ND AVENUE, 9TH FLOOR, MIAMI, FLORIDA 33130.

21. **NON-DISCRIMINATION:**

Licensee shall not discriminate against any persons on account of race, color, sex, sexual orientation, gender, religion, creed, ancestry, national origin, age, disability, or marital status in the use of the Premises.

22. **AUTHORIZED PERSONNEL:**

The City shall have authorized representatives with decision making authority, reasonably available at all

reasonable times throughout the Use Period for consultation with Licensee, as requested.

**23. AUTHORITY TO EXECUTE AGREEMENT:**

Each party represents to the other that it has the power to enter into this Agreement and that the consent of no other person or entity is required in connection therewith, except as otherwise provided, and this Agreement constitutes a valid and binding obligation of each party in accordance with the terms hereof. This Agreement is subject to the separate review and approval of the Miami City Commission as an express condition precedent to its validity.

**24. RELATIONSHIP OF PARTIES:**

This Agreement shall not be deemed or construed to create any landlord tenant relationship, leasehold estate, rights of exclusive occupancy and possession of the Property and Premises during the Use Period, or agency relationship, partnership, or joint venture between the City and Licensee. The City is not a guarantor of any debt, default or miscarriage of the Licensee.

The City enters into this Agreement with Licensee to provide Licensee with a limited use of the Property for the Event, and does so in a proprietary sense as landowner, not in its regulatory capacity. Any approvals herein shall not be considered approvals or waivers of any applicable laws, or otherwise relieve Licensee of any obligation it may have at law to submit applications with any department of the City or any other governmental authority having jurisdiction.

**25. NOTICES:**

Notices required under this Agreement shall be deemed to be given when hand-delivered (with receipt therefore) or mailed by registered or certified mail, postage prepaid, return receipt requested.

**AS TO LICENSEE:**

General Counsel  
Event Entertainment Group, Inc.  
201 S. Biscayne Blvd., #800  
Miami, Florida 33131

**AS TO THE CITY:**

City Manager  
City of Miami  
3500 Pan American Drive  
Miami, Florida 33133

**WITH A COPY TO:**

City Attorney  
City of Miami  
444 SW 2nd Avenue, Suite 945  
Miami, Florida 33130

**WITH A COPY TO:**

Director of Real Estate & Asset Management  
City of Miami  
444 SW 2nd Avenue, 3<sup>rd</sup> Floor  
Miami, Florida 33130

**26. GOVERNING LAW/VENUE; ATTORNEYS FEES:**

This Agreement shall be construed according to the laws of the State of Florida and venue for any and all claims or controversies that may arise as a result of this Agreement shall be heard in a court of competent jurisdiction in Miami-Dade County, Florida. Each party shall bear their own respective attorney's fees.

**27. CONFLICT OF INTEREST:**

Licensee is aware of the conflict of interest laws of the City of Miami (Code of the City of Miami, Florida, Chapter 2, Article V), of Miami-Dade County, Florida (Code of Miami-Dade County, Florida, Section 2-11.1) and of the State of Florida (as set forth in Florida Statutes) and agrees it will fully comply in all respects with the terms of said laws and any future amendments.

**28. FORCE MAJEURE:**

The Parties shall not be liable to the other and shall excuse the other from their respective obligations hereunder for any failure to perform their respective obligations where such failure is caused by Force Majeure, which is defined herein as any event whereby the Property, or any portion thereof, shall be destroyed or damaged, as a result of any event beyond human control, including but not limited to acts of national security, national emergency, acts of God, war, act or threats of terrorism, domestic government regulations, strikes (other than strikes of Licensee's employees), fire or other natural calamity, disorder, civil disobedience, curtailment of transportation facilities or service, or any occurrence which makes it illegal or impossible for Licensee to perform its obligations under this Agreement.

**29. ASSIGNMENT:**

The City has relied on the extensive and unique reputation and experience of Licensee in granting this License. The License is personal to the Licensee. Licensee shall not sell, grant, confer, or assign this License or any part thereof to any other party, person, or entity. The License granted by this License is personal to the Licensee. Any assignment of this License contrary to the foregoing provision, whether voluntary or involuntary, shall be void and shall confer no right upon such assignee, shall constitute a default under this License, and shall result in an automatic revocation of the License and the forfeiture of the rights of Licensee hereunder following notification to Licensee.

**30. SEVERABILITY**

It is the express intent of the Parties that this Agreement constitutes a license and not a lease. To further this intent, the Parties agree as follows: (i) if any provision of this Agreement, or the application thereof to any circumstance, suggest that a lease, rather than a license, has been created, then such provision shall be interpreted in the light most favorable to the creation of a license and (ii) if any provision of this Agreement, or the application thereof to any circumstance, is determined by a court of competent jurisdiction to have created a lease rather than a license, then such provision shall be stricken and, to the fullest extent possible, the remaining provisions of this Agreement shall not be affected thereby and shall continue to operate and remain in full force and effect.

With regard to those provisions which do not affect the Parties intent for this Agreement to serve as a license, should any provision, section, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Miami, such provision, section, paragraph, sentence, word or phrase shall be deemed modified to the minimum extent necessary to accomplish the intent of this Agreement to the maximum extent allowable without violating any applicable laws; or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

**31. AMENDMENTS**

No alterations, amendments or modifications hereof shall be valid unless executed by an instrument in writing by the Parties with the same formality as this License. Neither this License, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by an instrument in writing, and no prior or subsequent oral agreement shall have any validity whatsoever. Notwithstanding any language to the contrary, the City Manager is authorized to administratively execute non-substantive or operational amendments, not involving material terms, to this License without the necessity of further action by the City Commission.

**32. CITY ACCESS**

The City and its authorized representative(s) shall at all times have access to the Property. The City will maintain a complete set of keys to the Property. Licensee, at its sole cost and expense, may duplicate or change key locks to the Property but not until first receiving written approval from the City Manager for such work. In the event Licensee changes key locks as approved by the City Manager, Licensee, at its sole cost and expense, must also provide to the City a copy or copies of said keys, if more than one copy is required.

The City shall have access to and entry into the Property at any time to: (a) inspect the Property; (b) to perform any obligations of Licensee hereunder which Licensee has failed to perform after written notice thereof to Licensee, Licensee not having cured such matter within ten (10) days of such notice, and without the City waiving any legal rights or remedies; (c) to assure Licensee's compliance with the terms and provisions of this Agreement and all applicable laws, ordinances, rules and regulations; (d) to show the Property to prospective purchasers, tenants or others; and (e) for other purposes as may be deemed necessary by the City Manager or his/her authorized designee in the furtherance of the City's corporate purpose. The City shall not be liable for any loss, cost or damage to the Licensee by reason of the exercise by the City of the right of entry described herein for the purposes listed above. The making of periodic inspections or the failure to do so shall not operate to impose upon the City any liability of any kind whatsoever nor relieve the Licensee of any responsibility, obligations or liability assumed under this Agreement.

**33. INDEPENDENT AUDITOR GENERAL-ACCESS TO DOCUMENTS**

The City of Miami has established the Office of the Independent Auditor General ("IAG"), to provide the City Commission with independent oversight of audit and analytical functions of the City. The IAG shall have the power to audit, and to make copies of or extracts from all records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to the Event and this Agreement but only to the extent necessary to ensure compliance with the terms expressly set forth in this Agreement. The IAG shall only have access to Licensee's records to the minimum extent required to ensure such compliance, and such records shall not include Licensee's internal financial and accounting records unrelated to the Event and this Agreement.

Any information deemed to be confidential, proprietary, or a trade secret under Florida law, but integral to completing audit procedures, will be timely made available for review but will be excluded from the audit work papers. Licensee shall, at all times during the term of this Agreement and for a period of five (5) years after the termination of this Agreement, maintain such records, together with such supporting or underlying documents and materials available in a location within Miami-Dade County, Florida as may be requested by the City. Nothing in this Section shall impair any independent right of the City of Miami, pursuant to applicable laws and regulations, to conduct audits or investigate its activities. The provisions of this Section are neither intended nor shall they be construed to impose any liability on the City of Miami by the Licensee or third parties.

***(SIGNATURE PAGE FOLLOWS)***

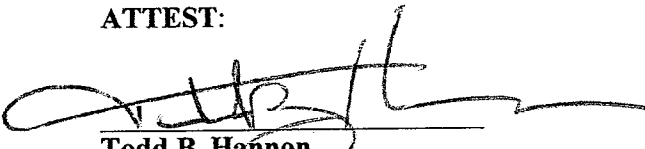


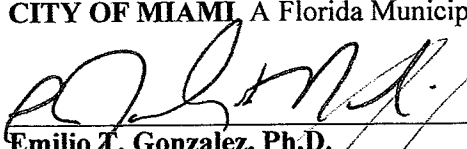
IN WITNESS WHEREOF, the parties hereto have individually and through their proper corporate official executed this Agreement, this the day and year first written.

**"CITY"**

**ATTEST:**

**CITY OF MIAMI**, A Florida Municipal Corporation

  
Todd B. Hannon  
City Clerk

  
Emilio T. Gonzalez, Ph.D.  
City Manager

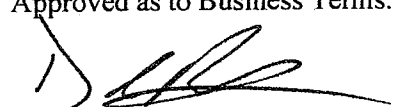
Approved as to Legal Form  
And Correctness by:

  
Victoria Méndez,  
City Attorney

Approved as to Insurance  
Requirements by:

  
Ann-Marie Sharpe  
Director of Risk Management

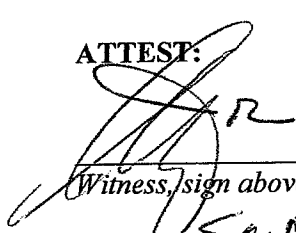
Approved as to Business Terms:

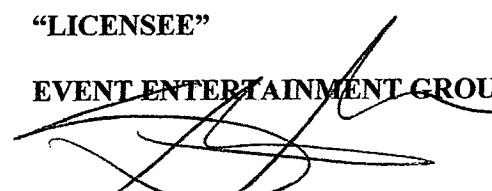
  
Daniel Rotenberg  
Director of Real Estate &  
Asset Management


**"LICENSEE"**

**EVENT ENTERTAINMENT GROUP, INC.**

**ATTEST:**

  
Witness, sign above & print name below  
Sandra Lopez

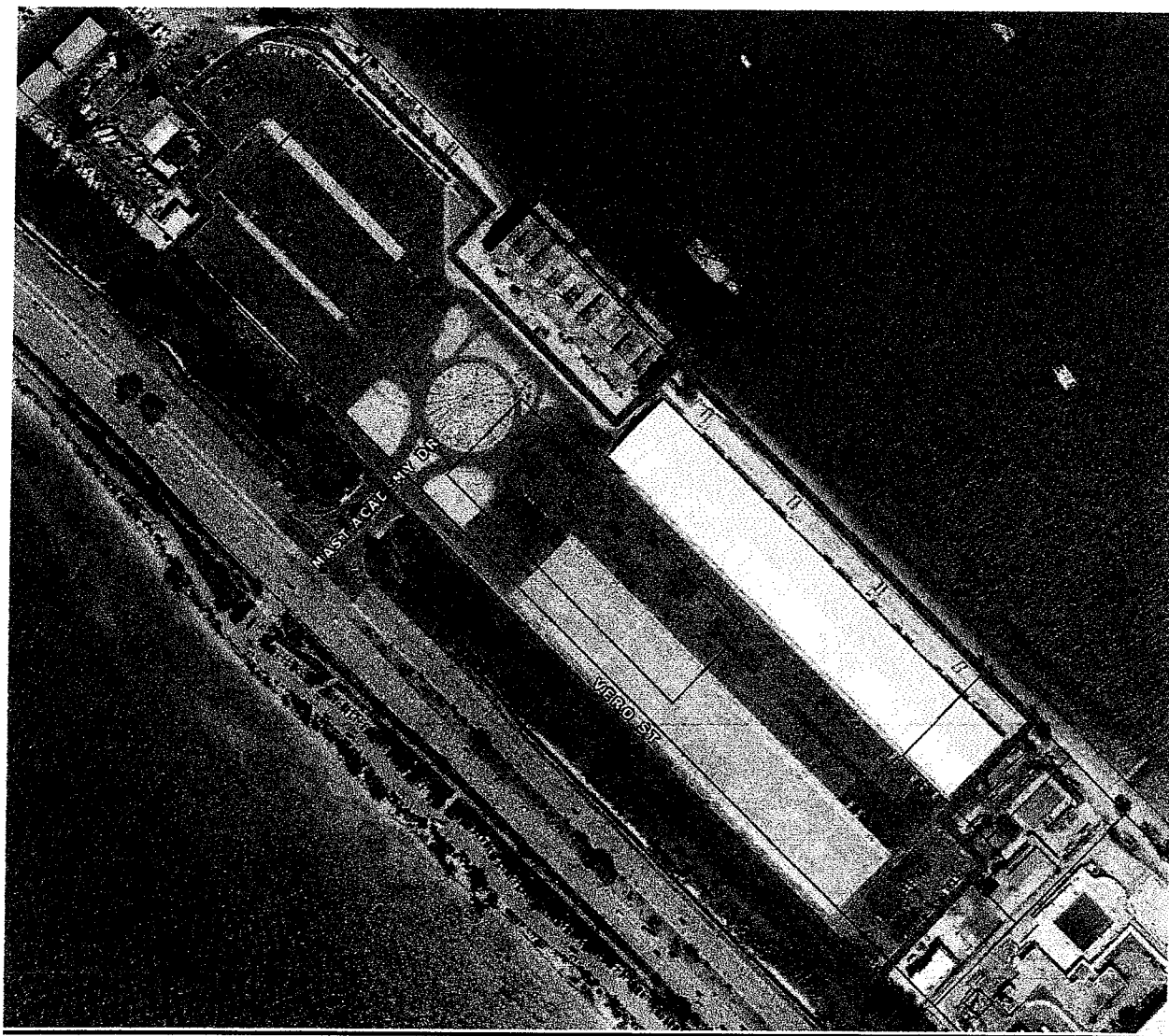
  
Steven A. McCord  
Chief Financial Officer

  
Witness, sign above & print name below  
Michael Gaid

**EXHIBIT A-1**

**PROPERTY – MARINE STADIUM AREA**

**Generally located on or around 3801 Rickenbacker Causeway Miami, FL 33149  
(subject to existing Leases, Licenses, and any other City Agreements)**

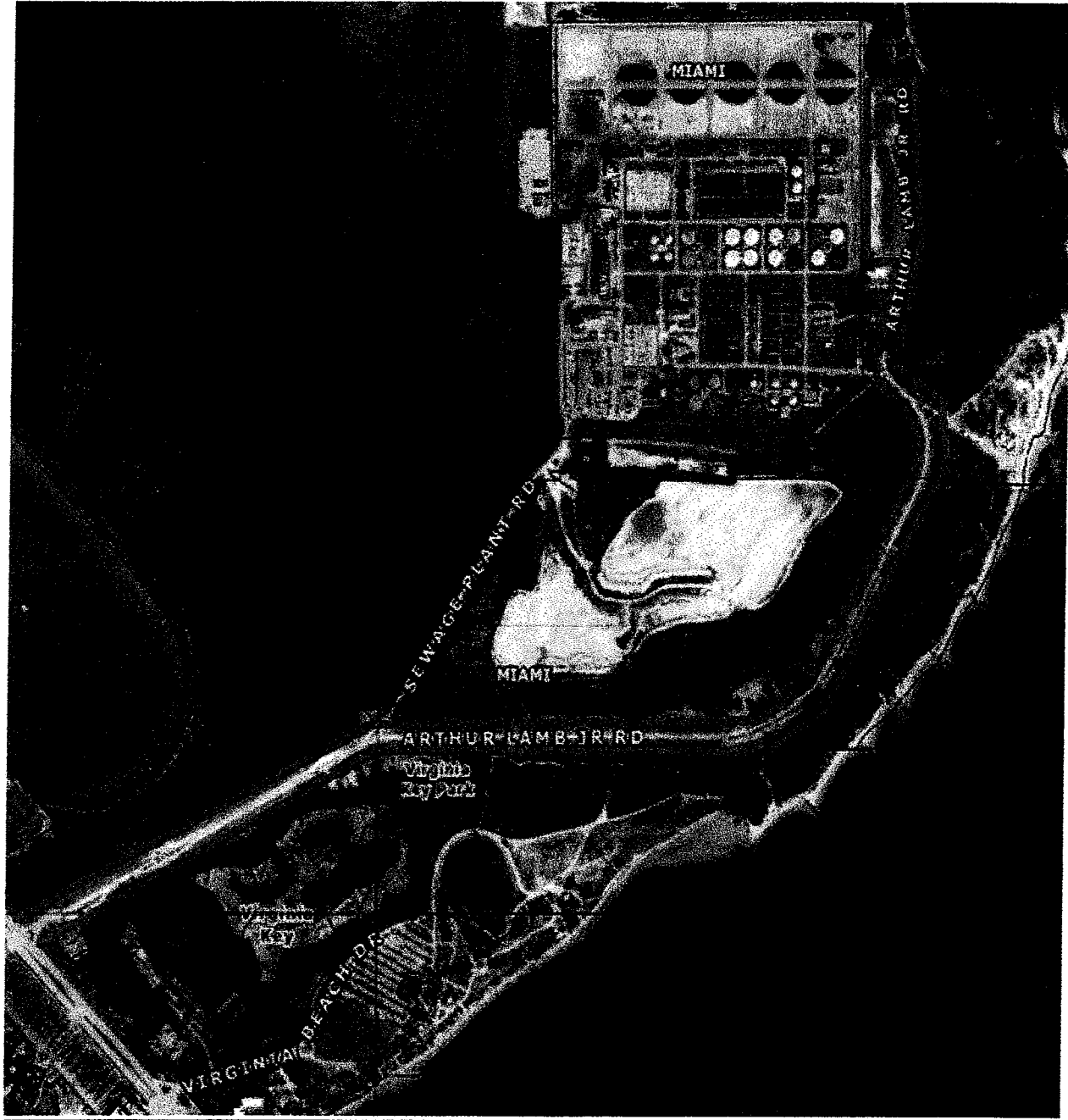


**\*Sizes and demarcation lines are approximate and subject to a formal survey**

EXHIBIT A-2

PROPERTY – ARTHUR LAMB ROAD AREA

Generally located on or around 3801 Rickenbacker Causeway Miami, FL 33149  
(subject to existing Leases, Licenses, and any other City Agreements)

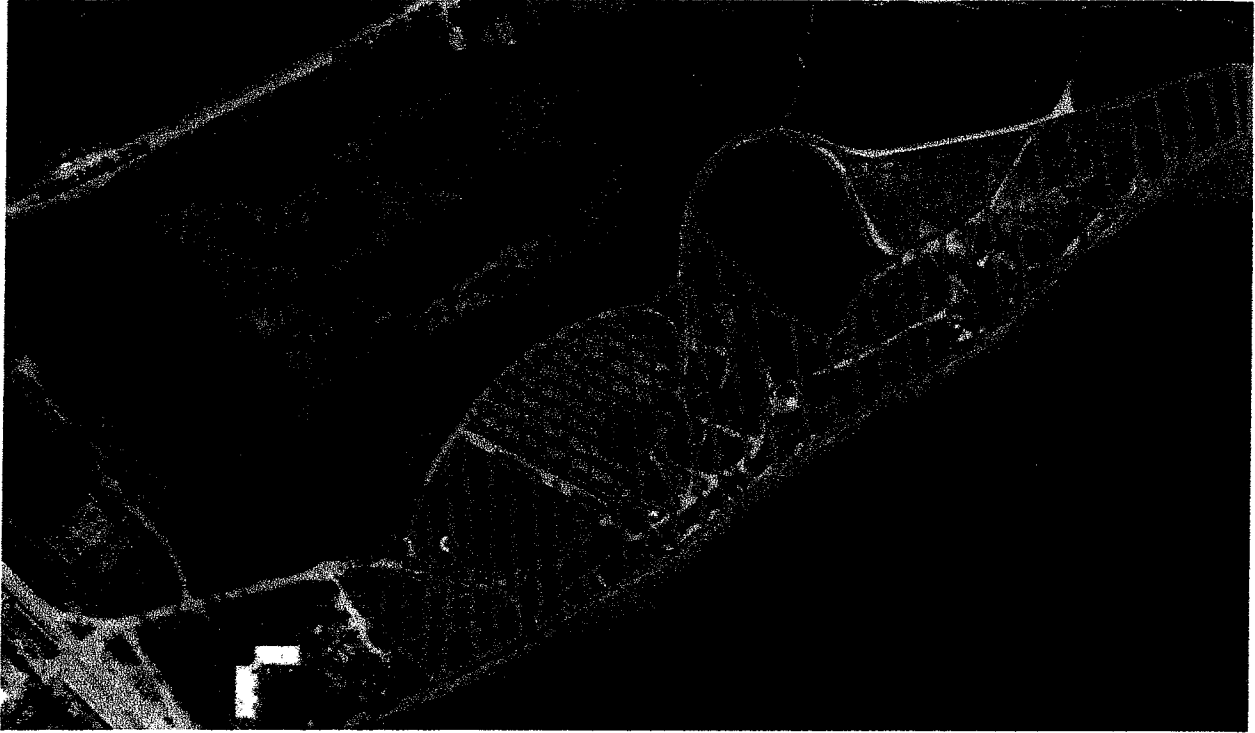


\*Sizes and demarcation lines are approximate and subject to a formal survey

**EXHIBIT A-3**

**PROPERTY – HISTORIC VIRGINIA KEY BEACH PARK TRUST AREA**

**Generally located on or around 4020 Virginia Beach Drive, Miami, FL 33149**



\*Sizes and demarcation lines are approximate and subject to a formal survey

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS FOR A CERTIFICATE OF INSURANCE-EVENT ENTERTAINMENT GROUP, INC.**

#### **I. Commercial General Liability**

##### **A. Limits of Liability**

Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$1,000,000

##### **B. Endorsements Required**

City of Miami, Virginia Key Beach Park Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Contingent and Contractual Liability  
Premises and Operations Liability  
Primary Insurance Clause Endorsement  
Explosion, Collapse and Underground Hazards  
Terrorism Coverage Included  
Liquor Liability Included  
Waiver of Subrogation

#### **II. Business Automobile Liability**

##### **A. Limits of Liability**

Bodily Injury and Property Damage Liability	
Combined Single Limit	
Any Auto, Owned Autos	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$ 1,000,000

##### **B. Endorsements Required**

City of Miami, Virginia Key Beach Park Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

#### **III. Worker's Compensation**

Limits of Liability  
Statutory-State of Florida  
Waiver of subrogation

Employer's Liability

- A. Limits of Liability  
\$1,000,000 for bodily injury caused by an accident, each accident.  
\$1,000,000 for bodily injury caused by disease, each employee  
\$1,000,000 for bodily injury caused by disease, policy limit

**V. Umbrella Policy/Excess Liability**

- A. Limits of Liability  
Bodily Injury and Property Damage Liability  
Each Occurrence \$ 10,000,000  
Aggregate \$ 10,000,000

City of Miami, Virginia Key Beach Park Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Coverage is excess over all applicable liability policies contained herein including terrorism and liquor liability.

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change, or in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

## **EXHIBIT B-2**

### **INSURANCE REQUIREMENTS FOR A CERTIFICATE OF INSURANCE-EVENT ENTERTAINMENT GROUP, INC. (CATERING COMPANY)**

#### **I. Commercial General Liability**

##### **A. Limits of Liability**

Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000

##### **B. Endorsements Required**

City of Miami, Virginia Key Beach Park Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Contingent and Contractual Liability  
Premises and Operations Liability  
Primary Insurance Clause Endorsement  
Explosion, Collapse and Underground Hazards  
Terrorism Coverage Included  
Waiver of Subrogation

#### **II. Business Automobile Liability**

##### **A. Limits of Liability**

Bodily Injury and Property Damage Liability Combined Single Limit	
Any Auto, Owned Autos	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$ 1,000,000

##### **B. Endorsements Required**

City of Miami, Virginia Key Beach Park Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

#### **III. Worker's Compensation**

Limits of Liability  
Statutory-State of Florida  
Waiver of subrogation

**Employer's Liability**

Limits of Liability  
\$1,000,000 for bodily injury caused by an accident, each accident.  
\$1,000,000 for bodily injury caused by disease, each employee  
\$1,000,000 for bodily injury caused by disease, policy limit

**IV. Umbrella Policy/Excess Liability**

Limits of Liability  
Bodily Injury and Property Damage Liability  
Each Occurrence \$10,000,000  
Aggregate \$10,000,000

City of Miami, Virginia Key Beach Park Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Coverage is excess over all applicable liability policies contained herein including liquor liability.

**V. Liquor Liability**

Limits of Liability  
Each Occurrence \$1,000,000  
Aggregate \$1,000,000

City of Miami, Virginia Key Beach Park Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change, or in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.



## EXHIBIT C

### ADDITIONAL CHARGES (TO THE EXTENT APPLICABLE)

1. City of Miami Police personnel and equipment
2. City of Miami Fire Rescue personnel and equipment
3. Light Pole, Benches, Bike Racks Removal/Reinstall
4. Chain Link Fence Removal
5. Solid Waste Downtown
6. Solid Waste Trash Hauling
7. Overtime Fees
8. Taxes
9. Electricians (to the extent provided by the City)
10. Drums/oil containers and/or disposal fees
11. Fiber Optic and/or WIFI costs
12. Utilities (electrical, water, sewer, etc.)
13. Qualified staff required for environmental management, remediation, or supervision (unless otherwise provided by Licensee at its sole cost)
14. Financial commitments to nearby third party businesses, as applicable, to account for the financial impact on such third party businesses to the extent affected by the Event

## EXHIBIT D-1

### HISTORIC VIRGINIA KEY BEACH PARK HISTORIC BUILDINGS AND SENSITIVE AREAS

Historic facilities and elements off-limits to Ultra Music Festival event use area:

- Historic Concession Stand Building
- Historic Carousel Amusement Ride
- Historic Mini Train and Railroad Amusement ride
- Virginia Key Beach Park Trust Administrative Building



Virginia Key Beach Park Trust

*Historic Virginia Key Beach Park*

Print #180625126  
Date: 06/25/18  
Lat/Lon: 25.736455 -80.157200  
Order No. 52076  
Aerial Photography, Inc. 954-568-0484

**EXHIBIT D-2**

**HISTORIC VIRGINIA KEY BEACH PARK**  
**HISTORIC BUILDINGS AND SENSITIVE AREAS**

Sensitive Natural Areas off-limits to festival area and interaction:

- Natural pond and surrounding protected vegetation
- Mangrove wetland
- Protected coastal dune areas
- Mature native trees and vegetation
- Hardwood Hammock
- Army Corps of Engineers 1135 Ecosystem Restoration Area



**Virginia Key Beach Park Trust**


*Historic Virginia Key Beach Park*

Print #180925227

Date: 09/25/18

Lat/Lon: 25.736455 -80.157200

Order No. 52076

 Aerial Photography, Inc. 954-568-0484

**EXHIBIT D-3**

**HISTORIC VIRGINIA KEY BEACH PARK**  
**HISTORIC BUILDINGS AND SENSITIVE AREAS**

Historic Virginia Key Beach Park's two (2) children's' playground areas:

- Boundless Playground
- Railroad Playground



**Virginia Key Beach Park Trust**


*Historic Virginia Key Beach Park*

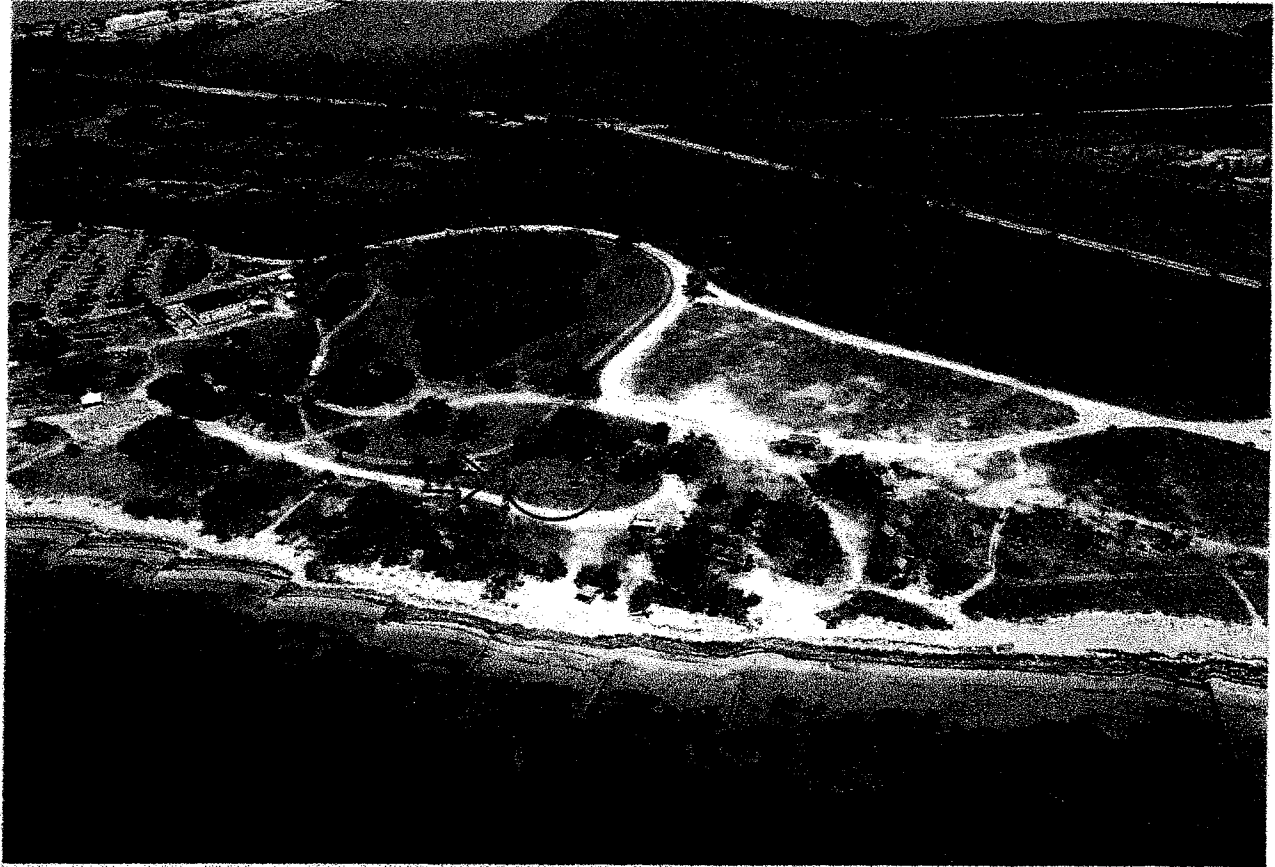
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Date: 06/25/18

Lat/Lon: 25.736455 -80.157200

Order No. 52076

 Aerial Photography, Inc. 854-569-0484



**Virginia Key Beach Park Trust**


*Historic Virginia Key Beach Park*

Print #180625127

Date: 06/25/18

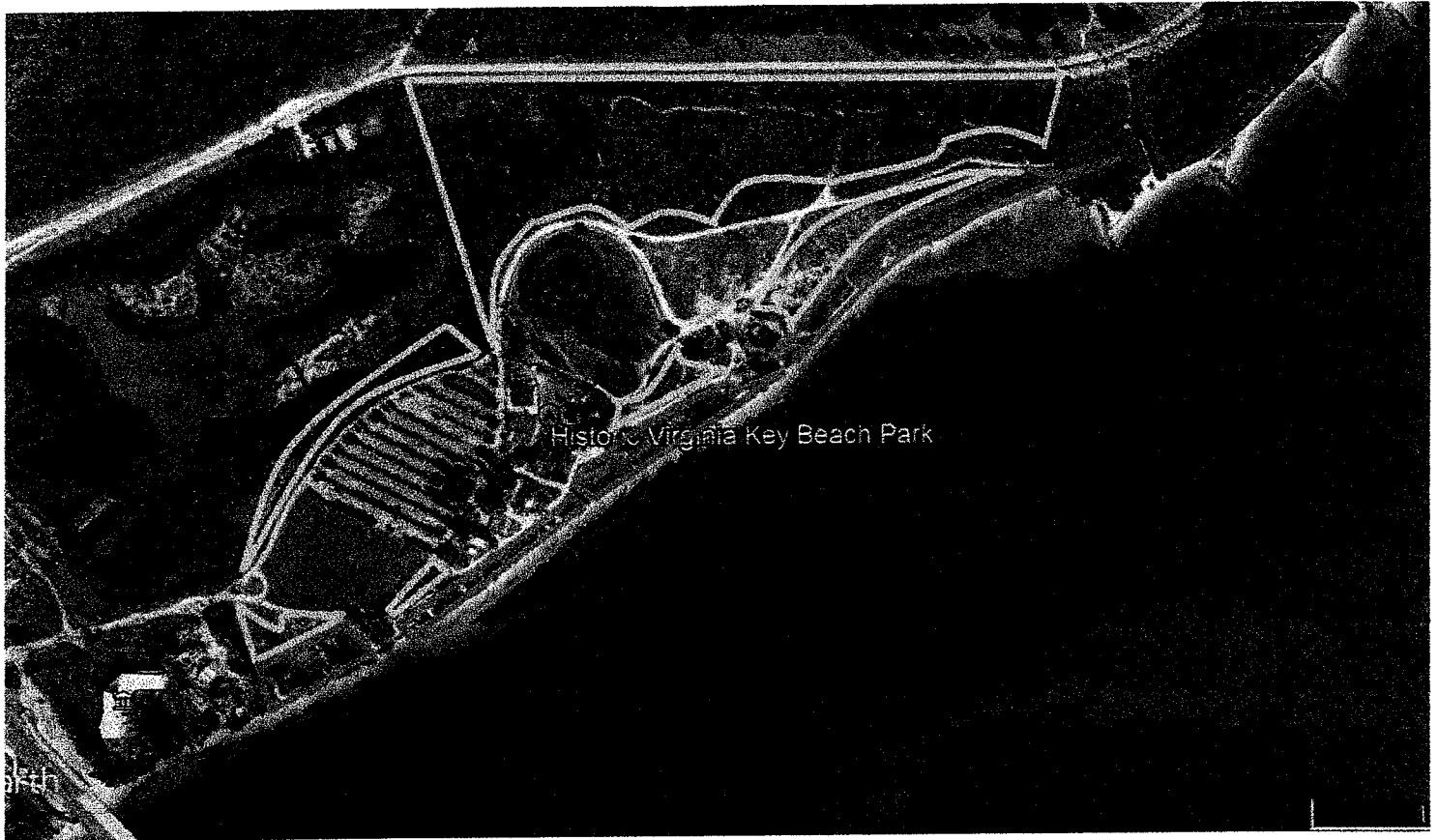
Lat/Lon: 25.738455 -80.157200

Order No. 52076

 Aerial Photography, Inc. 954-566-0434

## EXHIBIT E

### ENVIRONMENTALLY SENSITIVE AREAS FOLLOWING THE ARMY CORPS OF ENGINEERS SECTION 1135 ECOSYSTEM RESTORATION PROJECT



Legend	
Red	Wetlands
Yellow	Tropical Hardwood Hammock
Blue	Pond w/ Wetlands
Orange	Dune/Coastal Strand

The above image is included as an Exhibit to this Agreement for the purpose of identifying various environmentally-sensitive areas throughout the Historic Virginia Key Beach Park to be considered and protected during the Use Period for each Ultra Event. Ultra shall review the various sensitive areas in preparation of the Environmental Management and Remediation Plan.

Pedestrians pathways and limited vehicular paths between them and throughout the property may be utilized by park visitors and maintenance vehicles to the extent the sensitive areas are not adversely affected. The Historic Virginia Key Beach Park Trust ("Trust") has reviewed the site plan provided for the 2019 Event, and has determined the 2019 site plan adheres to the above exhibit.